



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	16 VAC 5, Virginia Employment Commission
VAC Chapter Number:	16 VAC 5-32
Regulation Title:	Required Records and Reports
Action Title:	Required Records and Reports
Date:	March 30, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposal would codify in regulation current state and federal policies regarding the records employers may be required to produce in order to verify income reporting. The amendment would also lay the groundwork to allow employers to submit required wage reports electronically. The amendments also include technical changes.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The Virginia Employment Commission (VEC) is authorized to promulgate regulations in 60.2-111.A of the Code of Virginia. This provision provides broad-based authority for the agency to “adopt, amend, or rescind such rules and regulations...as it deems necessary or suitable to that end.” Written assurance from the Office of the Attorney General that the Virginia Employment Commission possesses, and has not exceeded, its statutory authority to promulgate the proposed amendments is attached.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

While the amendments are not essential to protect the health, safety or welfare of the citizens of the Commonwealth, they are intended to make technical changes, codify current agency practice with respect to record-keeping, and to pave the way for employers to submit quarterly wage reports electronically.

Currently, state law provides, in § 60.2-114, that “[t]he commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the Commission deems necessary for the effective administration or this title.” The commission typically uses certain records in order to verify wage reports in the event of an audit. The provisions in 16 VAC 5-32-10.B enumerate the documents that employers should keep in order to document wages have been accurately reported and that taxes or refunds have been correctly computed and paid. The amendment does not increase the records employers are required to keep, but should help put employers on notice of the types of documents already required and will assist the commission’s auditors by providing more specific references than are contained in state statute.

Amendments in 16 VAC 5-32-20 changing a reference from “forms” to “format” is a first step in developing electronic filing for wage and tax reports. Currently such reports are prepared and submitted in paper format. By establishing electronic transmission of required reports, the agency hopes to make filing more convenient and reduce mailing costs and transmission time for employers and the commission.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The amendment to 16 VAC 5-32-10.A on page one is technical in nature and simply adopts wording used in the agency's authorizing statute to maintain consistency. The amendment to 16 VAC 5-32-10.A.7.a (p. 2) is technical and changes a reference in the regulation to the term used in the agency's definitions contained in 16 VAC 5-10-10. The amendment on page 3 to 16 VAC 5-32-10.B codifies the agency's current practice, authorized by state law, of requiring certain documentation if it is necessary to ensure that wages have been accurately reported and taxes and refunds correctly computed and paid. The intent of codifying current requirements is to advise employers of the types of records that they should maintain in order to document quarterly wage reports. The amendment to 16 VAC 5-32-20.B requires that reports be made in a prescribed format rather than requiring such reports to be made on a specific form. This change prepares for the introduction of electronic wage reporting.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The issues associated with the proposed amendments are as follows:

1. The primary advantages to the public of enumerating the types of documents the Commission may require is that the regulation better-informs employers of the documents that may be necessary in the event of an audit. The primary advantage of establishing electronic filing of required reports is that filing such reports electronically eliminates postage costs and transmission time. Reducing transmission times should reduce fines for late reporting. The commission has not identified any disadvantages to the public in these amendments.
2. The primary advantage to the commission and the Commonwealth of enumerating the types of records employers must keep is that it will eliminate uncertainty among employers about the types of records that may be requested. The primary advantages to the commission and the Commonwealth from establishing electronic report filing is a reduction in postage costs and transmission times associated with reporting. Electronic filing may also encourage more timely reporting. The commission has not identified any disadvantages to the Commonwealth in these amendments.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

The projected costs and affected entities are as follows:

- a. Projected cost to the state: The agency does not anticipate any cost to the state to implement this regulation.
- b. The regulations will impose no costs on localities.
- c. The entities affected by the regulations are employers.
- d. There are approximately 161,000 employers making quarterly wage reports.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

The amendment to 16 VAC 5-32-10.A on page one is technical in nature and simply adopts wording used in the agency's authorizing statute to maintain consistency. The amendment to 16 VAC 5-32-10.A.7.a (p. 2) is technical and changes a reference in the regulation to the term used in the agency's definitions contained in 16 VAC 5-10-10. The amendment on page 3 to 16 VAC 5-32-10.B codifies the agency's current practice, authorized by state law, of requiring certain documentation if it is necessary to ensure that wages have been accurately reported and taxes and refunds correctly computed and paid. The intent of codifying current requirements is to advise employers of the types of records that they should maintain in order to document quarterly wage reports and taxes paid. The amendment to 16 VAC 5-32-20.B requires that reports be made in a prescribed format rather than requiring such reports to be made on a specific form. This change prepares for the introduction of electronic wage reporting.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The agency considered the alternative of not amending the chapter. However, that option would not have provided employers or the agency with the convenience of electronic filing. Therefore

the agency determined that amending the regulations to pave the way for electronic filing was the less burdensome alternative.

Similarly, the agency considered not listing the types of documents that employers may be required to produce and simply rely on the statement in § 60.2-114. However, this alternative did little to inform the public about the types of documents typically required to verify reports. Since the statute is vague about the types of documents that may be required, the agency elected to include the list in regulation rather than relying on statute alone.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The agency received no comment regarding this chapter during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

In order to ensure that the regulation is well written and easily understandable, the commission had the regulation read and reviewed by an individual who has no expertise in the commission's operations. The individual then summarized the changes to ensure that the amendments were clearly understandable on their face.

After the commission had produced draft regulations, a meeting was called with representatives of the business community, labor, the Bar, and public interest groups. During the meeting the commission distributed the draft regulations, answered questions, and received comments and suggestions. This information was used to revise the regulations in response to questions and to adopt suggestions.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The agency will convene an internal committee to review and re-evaluate this regulation within 3 years of their effective date to consider whether it should be continued, amended, or terminated. The goals against which the regulation will be reviewed are:

- a. Promote the accurate reporting of employment and wages earned by employees, through auditing 2% of the taxable employers annually.
- b. Within 90 days from the identification of delinquent employers, remove 80% from delinquent status by collecting amounts due and/or obtaining needed quarterly reports.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The commission does not anticipate that the proposed amendments will have any effect on the institution of the family or family stability, either positive or negative.